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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace) CC Docket No. 96-61
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

Initial Comments of
Consumer Federation of America and Consumers Union

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I. Introduction

The Consumer Federation of America and Consumers Union (CFA/CU)¹ respectfully submit these Initial Comments in the above referenced proceeding. Specifically, CFA/CU will focus on Section III of the notice on regulatory forbearance as it pertains to detariffing of interexchange services.

CFA/CU believe the Commission has lumped business and residential users together.

¹CFA is a non-profit association of some 240 pro-consumer groups, with a combined membership of 50 million, that was founded in 1968 to advance the consumer interest through advocacy and education. CU is a non-profit, educational, membership organization chartered in 1936 to provide information, education, and counsel about consumer goods and services and management of the family income. Consumer Union's income is derived solely from the sale of Consumer Reports magazine, its other publication and media products, and non-commercial grants.

which is inappropriate in light of the differences in the way these classes of consumers negotiate for and purchase interexchange services. As a result, we believe the tentative conclusions outlined in the Notice at para. 27 *et. seq.* run counter to the public interest. In short, what might be a reasonable policy for a class of customers that negotiate contracts for interexchange service is contrary to the public interest for the residential and small business consumer and therefore is inconsistent with the law.²

II. Residential Interexchange Customers Need Dependable, Widely Available Access to Rate Information

It is extremely difficult for consumers to understand the prices and discount plans for interexchange services in today's market. As large new entrants like the Regional Bell Operating Companies (RBOC's) enter this market, the marketing wars will get even more intense and confusing for the public. The fact is, unless specific contract terms have been negotiated, a consumers only practical source of price comparison comes from information gathered by organizations designed to make comparisons possible.³ The advertising and marketing wars among the companies do little to inform, and may actually confuse, consumers.

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)

³See *e.g.* Consumer Reports, September 1995.

One look at the television advertising and marketing of this industry tells us that there is very little actual information about the rates charged by the companies themselves.⁴ Instead, there are a series of attacks on the other companies and their discount programs.⁵ While the companies are certainly free to market their services as they see fit, the Commission must make certain that the public and their advocates have access to complete, accurate rate data so consumers will have a fighting chance to compare the different companies' service offerings and figure out what their interexchange services actually cost.

The elimination of tariff filing requirements will make it difficult, if not practically impossible, for the public to obtain this information. Indeed, as we are poised to see major additional competitors enter the long distance business, it is more important than ever that consumers are able to evaluate the prices and services being offered by the companies.

III. Detariffing Violates New §10 under §401 of the 1996 Act

The Communications Act established a three-prong test for determining whether

⁴Indeed, many advertisements don't even compare rates clearly. For instance, the company sponsoring the commercial may compare its discount plan rates to the standard rates of the competitor. In reality, the standard and discount rates of the two companies may be virtually identical.

⁵In recent months, Sprint has advertised based on the specific rate of 10¢ per minute, but there is no information on how that rate compares with other companies.

regulatory forbearance is appropriate.⁶ In the context of detariffing of interexchange services, the Commission must determine if tariffs are necessary to ensure rates and practices are just and reasonable as well as nondiscriminatory; necessary to protect consumers; and in the public interest. CFA/CU believe detariffing fails all three elements of this new statutory test.

A. Tariffs for residential service are necessary to ensure that charges and practices of interexchange carriers are just and reasonable and not discriminatory

The first prong of the regulatory forbearance test requires that the Commission make a finding that the tariffing requirement is not necessary to protect against unreasonable long distance rates or discriminatory pricing practices.⁷ Today, filed tariffs help assure that all consumers in a particular class are being treated in a nondiscriminatory manner. Once a rate is filed with the Commission, it operates as an “all comer” tariff for any qualified consumer who wants to obtain the service. In a contractual arrangement where regulators and customers can get complete information about prices, terms and conditions for service, there is also protection against unreasonably discriminatory pricing and discount programs.⁸

⁶1996 Act at §401 (adding §10).

⁷§10(a)(1) “enforcement of such regulation or provisions is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

⁸The Notice cites the Commission’s experiencing in detariffing of domestic mobile radio services as a basis for recommending detariffing for long distance service. Notice at 18. This is not a good comparison. First, mobile services are largely luxury or business services

CFA/CU do not believe it is practical to require signed contracts with every residential and small business consumer for long distance services. Indeed, we doubt that the carriers would support such a requirement. Furthermore, signed contracts would likely make it more difficult to switch among different carriers, a practice which should not be discouraged. It is the tariff, especially for residential subscribers, which gives consumers and regulators the means to determine whether the prices and practices of the interexchange carriers are unreasonable or discriminatory.

B. Tariffs are necessary to protect consumers

The second prong of the test for regulatory forbearance focuses on whether the rule is necessary for the protection of consumers.⁹ CFA/CU believe tariffs are necessary to protect residential and business consumers who do not have specific service contracts with the interexchange carriers.

Consumers can be effectively protected in a number of ways. These include rate regulation for markets which are not fully competitive, contracts for service, and rules

which are still very expensive and not a viable alternative to wireline services. In addition, in most cases, consumers know the terms and prices as part of a contract up front. As a result, they know what they will be required to pay for service for the term of their service contract. A residential or small business interexchange customer does not have the benefits or remedies of a traditional contractual relationship available.

⁹§10(a)(2) “enforcement of such regulation or provision is not necessary for the protections of consumers,”

governing disclosure of terms or conditions of service, such as the tariff requirement. The Commission has ruled out rate regulation for interexchange services as a consumer protection when it declared AT&T non-dominant over CFA's objections.¹⁰ As indicated at §III A *supra*, requiring contracts between the long distance company and every customer is impractical although this would provide specific, effective legal remedies for consumers who were mistreated. The least burdensome approach both for the industry and the Commission which still provides some protection for consumers is to require filing of tariff information in forms which are useful to the public at large.

C. Forbearance from the tariff requirement is not consistent with the public interest

The final statutory element is a traditional public interest review.¹¹ For all of the reasons cited, the Commission's proposal to eliminate tariff filings with respect to consumers without negotiated contract arrangements with the interexchange carriers is inconsistent with the public interest. As we move into the information age, it is said that information is currency. So too is it the case with long distance service. In fact, publicly available information about interexchange rates can result in meaningful savings in the pockets of the long distance consumer.

¹⁰*See*, CC Docket 79-252; CFA letter to Chairman Hundt, October 5, 1995.

¹¹§10(a)(3) "forbearance from applying such provision or regulation is consistent with the public interest."

Without tariffs, challenging the pricing practices of a long distance carrier will become more burdensome for consumers and companies alike. Indeed, it seems rather unlikely that an average consumer would even attempt to challenge a multi-billion dollar company over interpretation of a service agreement without a filed tariff or contract to rely on.

D. Any competitive benefit is outweighed by the risk to consumers

The Commission will also weigh the competitive benefits of forbearance.¹² CFA/CU believe that detariffing will do nothing to encourage increased competition among interexchange carriers for residential and small business customers. We simply do not believe concerns about inhibiting “price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends.”¹³ are legitimate competitive concerns in this market. The Commission is in danger of throwing the baby out with the bath water by eliminating the best source of complete information to consumers while the companies will continue to have no trouble gathering the information they desire.¹⁴

We think it implausible that a one day filing requirement for tariffs would put the companies at any competitive disadvantage. Furthermore, tariffs are a basis of review for

¹²§10(b).

¹³Notice at note 76 *citing* Nondominant Filing Order, 8 FCC Rcd at 6753,

¹⁴CFA/CU also believe a legitimate argument can be made that knowledge of a competitors prices can lead to the most vigorous competition.

complaints. Their elimination could arguably make it easier for companies to engage in anti-consumer or anti-competitive behavior.

IV. The Commission Should Increase the Availability of Price Information to All Consumers

With passage of the Communications Act, consumers are likely to face many confusing and conflicting messages about prices and services from an array of telecommunications companies throughout the industry. CFA/CU maintain that the Commission should take this opportunity to begin exploring ways to make as much information as possible about interexchange rates and service available to public in a comprehensible form.

The Notice suggests requiring companies to maintain relevant information on their premises which could be obtained by the Commission.¹⁵ This proposal does nothing to assist consumers in collecting information about rates and services, but it points out a reason this information should be made publicly available. The fact is, the companies will collect this data whether they are required to by the Commission or not. Any administrative burden associated with filing the information with the Commission is truly minimal, while the benefits to the public are great.¹⁶

¹⁵Notice at 23

¹⁶In addition to making the information available in hard copy, the Commission should also consider making the information available via the FCC website, with updates regularly.

V. Conclusion

CFA/CU believe the Commission should continue to require filing of tariffs, at least for services and customers which do not operate under a contractual relationship. The reality is that companies that wish to find out what the competition is charging have little or no difficulty in doing so regardless of whether or not there are formal tariff filings. It is the consumer who will be hamstrung if tariff information is not readily available to the public. We believe the Commission does not have the authority to eliminate tariff filing requirements under the new §10 of the Communications Act.

Respectfully submitted,



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